

CORRECTED FISCAL MEMORANDUM

SB 1967 – HB 1835

May 30, 2007

SUMMARY OF AMENDMENT (008049): Deletes the original bill in its entirety. Creates a Class D felony of possession of a firearm with the intent to go armed during the commission of or attempt to commit a “dangerous felony” punishable by a mandatory minimum three-year sentence served at 100%. “Dangerous felony” defined as first and second degree murder, voluntary manslaughter, criminally negligent homicide, reckless homicide, aggravated rape of a child, rape of a child, aggravated rape, rape, aggravated sexual battery, aggravated assault, especially aggravated robbery, aggravated robbery, robbery, carjacking, especially aggravated kidnapping, aggravated kidnapping, kidnapping, especially aggravated burglary, aggravated burglary, burglary, especially aggravated stalking, aggravated stalking, initiating process to manufacture methamphetamine, a felony involving the sale, manufacture, distribution or possession with intent to sell, manufacture or distribute a controlled substance defined in Tenn. Code Ann. §39-12-101 and any attempt to commit a dangerous felony. If such defendant had a prior felony conviction at the time of the offense the minimum sentence would be five years.

Creates a Class C felony of employment of a firearm during the commission, attempt to commit, flight or escape from the commission, or flight or escape from the attempt to commit a dangerous felony. Such offense is punishable by a mandatory minimum six-year sentence served at 100%, unless the defendant had a prior felony conviction at the time of the offense, in which case the minimum sentence would be ten years. All sentences must be served consecutively to any sentence the person is serving at the time of the offense or is sentenced to serve for conviction of the underlying dangerous felony. Such offenses are ineligible for pretrial diversion, judicial diversion, probation, community correction, or participation in a drug court program prior to service of the entire mandatory sentence imposed.

Prior conviction means that a person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of a dangerous felony prior to or at the time of committing a dangerous felony on or after January 1, 2008.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$60,323,700 / Incarceration*

SB 1967 – HB 1835 (CORRECTED)

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

On May 22, 2007, we issued a fiscal memorandum on this amendment indicating *an increase in state expenditures – net impact - \$37,882,200/Incarceration**. Based on the additional information from the Department of Correction, this fiscal impact of the bill with the proposed amendment is as follows:

(CORRECTED)

Increase State Expenditures – Net Impact –

\$42,848,200 / Incarceration*

Assumptions applied to amendment:

- According to the Department of Correction (DOC), the average operating cost per inmate per day for calendar year 2007 is \$60.16.
- According to the U. S. Census Bureau, population growth in Tennessee has been 1.09 percent per year for the past ten years.
- According to DOC, in October, 2005, 2.86 percent of the inmate population (547) had possession of a weapon by a convicted felon as a secondary offense. Annual admissions for FY06 for dangerous crimes were 8,098. DOC estimates two and one-half percent (202) of those annual admissions would have possession or employment of a firearm during the commission, attempt to commit, flight or escape from the commission, or flight or escape from the attempt to commit a dangerous felony. DOC assumes 50 percent (101) of those would be convicted of a Class D felony in the first year and would be required to serve a mandatory minimum three years as a result of this bill. Population growth would result in 13 additional offenders in the tenth year. The maximum cost in the tenth year is based on 114 offenders serving three years as a result of this bill.
- 114 offenders would be convicted of a Class D felony and would serve three years. The cost per inmate at 3.0 years is \$65,920.32 (\$60.16 x 1095.75 days). The total additional operating cost for 114 offenders is \$7,514,916.16 (\$65,920.32 x 114).
- The remaining 50 percent (101) would be convicted of a Class D felony, with a prior felony conviction, in the first year and would serve a mandatory minimum five years as a result of this bill. Population growth would result in 13 additional offenders in the tenth year. The maximum cost in the tenth year is based on 114 offenders serving five years as a result of this bill.
- 114 offenders will be convicted of a Class D felony and will serve a mandatory minimum five years. The cost per inmate at 5.0 years is \$109,867.20 (\$60.16 x 1826.25 days). The total additional operating cost for 114 offenders is \$12,414,993.60 (\$109,867.20 x 114).

- 67 inmates had robbery armed with a deadly weapon as primary offense. DOC assumes 50% (34) of those would have involved firearms. Estimate assumes the charge would be reduced to robbery which would allow adding the sentence for employment of a weapon. Population growth will result in four additional offenders in the tenth year. The maximum cost in the tenth year is based on 38 offenders serving 1.5 years rather than 2.4 years (Class B at 2.4 years reduced to Class C at 0.9 years = 1.5 years). The cost per inmate at 1.5 years is \$32,959.26 ($\60.16×547.86 days). The net operating cost for 38 offenders is \$1,252,451.88 ($\$32,959.26 \times 38$). 50% (19) of these offenders will serve an additional mandatory minimum six-year sentence as a result of this bill. The additional cost per inmate at six years is \$131,840.64 ($\60.16×2191.50 days). The total additional operating cost for 19 offenders is \$2,504,972.16 ($\$131,840.64 \times 19$). The remaining 50% (19) will serve an additional mandatory minimum ten-year sentence as a result of this bill. The additional cost per inmate at ten years is \$219,734.40 ($\60.16×3652.50 days). The total additional operating cost for 19 offenders is \$4,174,953.60 ($\$219,734.40 \times 19$).
- 71 inmates had attempted second degree murder as a primary offense. DOC assumes 25% (18) of these involved the use of a firearm. Population growth will result in two additional offenders in the tenth year. The maximum cost in the tenth year is based on 20 offenders. 50 percent (10) of those would serve an additional six years for the employment of a weapon. The maximum cost in the tenth year is based on 10 offenders serving 6.0 years (2191.50 days). The cost per inmate at 6.0 years is \$131,840.64 ($\60.16×2191.50 days). The total additional operating cost for 10 offenders is \$1,318,406.40 ($\$131,840.64 \times 10$). The remaining 50 percent (10) would serve an additional 10 years for employment of a weapon with a prior felony conviction. The cost per inmate at 10.0 years is \$219,734.40 ($\60.16×3652.50 days). The total additional operating cost for 10 offenders is \$2,197,344.00 ($\$219,734.40 \times 10$).
- 71 inmates had voluntary manslaughter as a primary offense. DOC assumes 25% (18) of these involved the use of a firearm. Population growth will result in two additional offenders in the tenth year. The maximum cost in the tenth year is based on 20 offenders. 50% (10) of those would serve an additional six years for the employment of a weapon. The maximum cost in the tenth year is based on 10 offenders serving 6.0 years (2191.50 days). The cost per inmate at 6.0 years is \$131,840.64 ($\60.16×2191.50 days). The total additional operating cost for 10 offenders is \$1,318,406.40 ($\$131,840.64 \times 10$). The remaining 50% (10) would serve an additional 10 years for employment of a weapon with a prior felony conviction. The cost per inmate at 10.0 years is \$219,734.40 ($\60.16×3652.50 days). The total additional operating cost for 10 offenders is \$2,197,344.00 ($\$219,734.40 \times 10$).

- 62 inmates had evading arrest/risk of death as a primary offense. DOC assumes 25% (16) of these involved the use of a firearm. Population growth will result in two additional offenders in the tenth year. The maximum cost in the tenth year is based on 18 offenders. DOC estimates that 50% (9) would be charged with a Class C felony in the first year and would be required to serve a mandatory minimum six years as a result of this bill. The cost per inmate at six years is \$131,840.64 ($\60.16×2191.50 days). The total additional operating cost for nine offenders is \$1,186,565.76 ($\$131,840.64 \times 9$). The remaining 50% would have a prior felony conviction at the time of the offense and would serve a mandatory minimum ten-year sentence. The cost per inmate at 10 years is \$219,734.40 ($\60.16×3652.50 days). The total additional operating cost for nine offenders is \$1,977,609.60 ($\$219,734.40 \times 9$).
- 964 inmates had aggravated assault as a primary offense. DOC estimates 25% (241) involved a weapon and 50% (121) of those involved a firearm. Population growth will result in 14 additional offenders in the tenth year. The maximum cost in the tenth year is based on 135 offenders. Estimate assumes 20% (27) would be convicted based on serious bodily injury and 50% (14) of these would serve a minimum mandatory six years as a result of this bill. The cost per inmate at six years is \$131,840.64 ($\60.16×2191.50 days). The total additional operating cost for 14 offenders is \$1,845,768.96 ($\$131,840.64 \times 14$). The remaining 50% (13) would have a prior felony conviction at the time of the offense and would serve a minimum mandatory ten-year sentence as a result of this bill. The cost per inmate at 10.0 years is \$219,734.40 ($\60.16×3652.50 days). The total additional operating cost for 13 offenders is \$2,856,547.20 ($\$219,734.40 \times 13$).
- 162 inmates had reckless aggravated assault as a primary offense. DOC estimates 25% (41) of these involved a weapon and 50% (21) involved a firearm. Population growth will result in two additional offenders in the tenth year. The maximum cost in the tenth year is based on 23 offenders. Estimate assumes 20% (5) of these would be convicted based on serious bodily injury and 50% (3) of these would serve a minimum mandatory six years as a result of this bill. The cost per inmate at six years is \$131,840.64 ($\60.16×2191.50 days). The total additional operating cost for three offenders is \$395,521.92 ($\$131,840.64 \times 3$). The remaining 50% (2) would have a prior felony conviction at the time of the offense and would serve a minimum mandatory ten-year sentence as a result of this bill. The cost per inmate at 10.0 years is \$219,734.40 ($\60.16×3652.50 days). The total additional operating cost for two offenders is \$439,468.80 ($\$219,734.40 \times 2$).
- 34 inmates had carjacking as a primary offense. DOC estimates 25% (9) involved a firearm. Population growth will result in one additional offender in the tenth year. The maximum cost in the tenth year is based

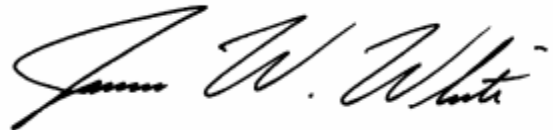
on 10 offenders. Estimate assumes 50 percent (5) would serve a minimum mandatory six years as a result of this bill. The cost per inmate at six years is \$131,840.64 (\$60.16 x 2191.50 days). The total additional operating cost for five offenders is \$659,203.20 (\$131,840.64 x 5). The remaining 50 percent (5) would have a prior felony conviction at the time of the offense and would serve a minimum mandatory ten-year sentence as a result of this bill. The cost per inmate at 10.0 years is \$219,734.40 (\$60.16 x 3652.50 days). The total additional operating cost for five offenders is \$1,098,672.00 (\$219,734.40 x 5).

- Estimate assumes that possession with intent to go armed is a lesser included offense of the offense to employ a firearm. Estimate also assumes, based on recidivism data provided by DOC, that 50% of offenders convicted under this bill have a prior conviction as defined by the bill.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/LSC